

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 135 - HB 197

March 22, 2021

SUMMARY OF ORIGINAL BILL: Requires a records custodian to attempt to resolve disputes with certain requestors via mediation prior to petitioning a court to enjoin the requestor from making requests. Repeals such process on July 1, 2025.

FISCAL IMPACT OF ORIGINAL BILL:

Increase Local Expenditures –

Exceeds \$100/Each Year FY21-22 through FY24-25/Permissive

Other Fiscal Impact – Any impact to local government associated with agreements established through mediation cannot reasonably be determined; however, such impact is considered permissive.

SUMMARY OF AMENDMENT (005640): Deletes and rewrites all language after the enacting clause such that the substantive changes: (1) establishes a process by which a records custodian may petition a court to enjoin a requestor whose intent is to disrupt governmental operations after the requestor has been provided certain notification; and (2) remove the requirement that mediation must be pursued prior to seeking court action.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

NOT SIGNIFICANT

Assumptions for the bill as amended:

- The proposed legislation would:
 - Authorize a records custodian to seek an injunction against a person who makes requests to view public records with intent to disrupt government operations, after the person has made five requests in such a manner and the records custodian has provided written notice to the requestor;
 - Establish that the court may issue an injunction to enjoin the person from making public records requests for up to one year, if the court finds by clear and convincing evidence that the records requests constituted harassment;
 - Authorize enjoined persons to petition the court for public records.

- Authorize the release of the public records if the person proves that the request does not constitute harassment;
- Require a records custodian to continue to provide records requests until a petition is decided; upon which the harassing requestor is required to reimburse the records custodian for labor costs incurred in producing records.
- Based on responses to the 2017 Local Government Survey conducted by the Fiscal Review Committee staff, of the 26 percent of county and municipal government officials reporting, there were approximately 31,742 open records requests made locally in 2017. It is unknown how many public records requests are made at the state level.
- Records custodians will be required to provide written notice to applicable requestors after the fifth public records request which is considered as having intent to disrupt governmental operations. It is assumed that once receiving a written notice from a records custodian, such requestor will either discontinue making requests in such a manner, or postpone records requests for one year; therefore, any increase in local government expenditures associated with petitioning the court for a petition of injunction is considered not significant.
- Requiring records custodians to provide information to the Office of Open Records Counsel (OORC) and the OORC to publish a summary of such information will not result in any significant fiscal impact to state or local government.
- The proposed language is not estimated to result in a significant increase in the total case load of the court system.
- The provisions of the proposed language will be repealed on July 1, 2025.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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